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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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| 08/071,052 | 06/04/93 | KREAMER | J 467312465 |

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HM22/1130

EXAMINER

CRIARES, T

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1617

DATE MAILED:

11/30/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/071,052

Applicant(s)

Kreamer

Examiner
Theodore J. Criares

Group Art Unit
1617



☒ Responsive to communication(s) filed on Jun 13, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 11-29 is/are pending in the application.

Of the above, claim(s) 11-26 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 27-29 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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CLAIMS 11-29 ARE PRESENTED FOR EXAMINATION

The Petition of September 1, 2000 has been granted. The Amendment of June 13, 2000 is entered.

Applicant's election with traverse of the combinations of claims 27-29 in Paper No. 19 is acknowledged. The traversal is on the ground(s) that it would require multiple applications. This is not found persuasive because as stated in *In re Kerkhoven*, 626 F.2d 846, 205 USPQ 1069, at page 1072 (CCPA 1980):

It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose. *In re Susi*, 58 CCPA 1074, 1079-80, 440 F.2d 442, 445, 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21, 279 F.2d 274, 276-277, 126 USPQ 186, 188 (CCPA 1960). As this court explained in *Crockett*, the idea of combining them flows logically from their having been individually taught in the prior art.

Therefore, applicant's combination could support separate and distinct applications.

Claims 11-26 are withdrawn from consideration.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hennekens (5,871,766).

Hennekens in the Abstract and at column 3, lines 66-67 teaches the compost of beta-carotene and aspirin. At column 6, lines 57-67 it is taught that a combination of beta-carotene (which is disclosed at column 2, lines 20-21 to be a provitamin of Vitamin A) and aspirin in the amounts of 50 mg and 32.5 mg, respectively was used in the treatment of cardiovascular mortality.

Applicant's claims are drawn to a composition. It is well recognized in Patent Law that a new use of known composition does not render the composition patentable.

Therefore, the composition claims # - # are obviated under 35 U.S.C. 103 since an intended use limitation does not render the composition unobvious. See *In re Skoner*, 186 USPQ 80 (CCPA 1975); *In re Kalm* 154 USPQ 10 (CCPA 1967); *In re Halley* 132 USPQ 16 (CCPA 1961).

It is suggested that applicant present data to establish a synergistic combination. A review of Applicant's specification fails to provide such data comensurate with the scope of claims 27-29.

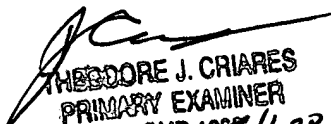
None of the claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Criares whose telephone number is (703) 308-4607. The examiner can normally be reached on Monday to Thursday from 9:00 A.M. to 5:00 P.M.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7924.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.


THEODORE J. CRIARES
PRIMARY EXAMINER
GROUP 1200/600